

# **EXHIBIT 10**

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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk  
By D. Giles Deputy

Michael W. Ellison (SBN 145832)  
SMITH ♦ ELLISON  
A Professional Corporation  
19800 MacArthur Boulevard, Suite 1475  
Irvine, California 92612-2445  
Telephone: (949) 442-1500  
Facsimile: (949) 442-1515

Attorneys for Plaintiffs First State Insurance Company  
and Nutmeg Insurance Company

SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

FIRST STATE INSURANCE COMPANY  
AND  
NUTMEG INSURANCE COMPANY,

Plaintiffs,

v.

VULCAN MATERIALS COMPANY,  
ACE PROPERTY AND CASUALTY  
INSURANCE COMPANY,  
AFFILIATED FM INSURANCE  
COMPANY,  
ALLIANZ UNDERWRITERS INSURANCE  
COMPANY,  
AMERICAN EXCESS INSURANCE  
EXCHANGE,  
AMERICAN HOME ASSURANCE  
COMPANY,  
AMERICAN RE-INSURANCE COMPANY,  
ATLANTA INTERNATIONAL  
INSURANCE COMPANY,  
CENTURY INDEMNITY COMPANY,  
CERTAIN UNDERWRITERS AT LLOYDS  
OF LONDON,  
CONTINENTAL CASUALTY COMPANY,  
EMPLOYERS REASSURANCE  
CORPORATION,  
EMPLOYERS REINSURANCE  
CORPORATION,  
FIREMAN'S FUND INSURANCE  
COMPANY,  
GERLING AMERICA INSURANCE  
COMPANY,  
GRANITE STATE INSURANCE  
COMPANY,

Case No. BC354664

**COMPLAINT FOR DECLARATORY  
RELIEF, EQUITABLE INDEMNITY,  
AND EQUITABLE CONTRIBUTION**

1 HOLLAND-AMERICA INSURANCE )  
 COMPANY, )  
 2 INDUSTRIAL INDEMNITY INSURANCE )  
 SERVICES, INC., )  
 3 INSURANCE COMPANY OF NORTH )  
 AMERICA, )  
 4 INTEGRITY INSURANCE COMPANY, )  
 LEXINGTON INSURANCE COMPANY, )  
 5 NATIONAL UNION FIRE INSURANCE )  
 COMPANY OF PITTSBURGH, PA, )  
 6 NORTHWESTERN NATIONAL )  
 INSURANCE COMPANY OF )  
 7 MILWAUKEE, WISCONSIN, )  
 PACIFIC EMPLOYERS INSURANCE )  
 8 COMPANY, )  
 PACIFIC INDEMNITY COMPANY, )  
 9 SAFETY NATIONAL CASUALTY )  
 CORPORATION, )  
 10 STONEWALL INSURANCE COMPANY, )  
 THE CONTINENTAL INSURANCE )  
 11 COMPANY, )  
 TIG INSURANCE COMPANY, )  
 12 TRANSPORT INSURANCE COMPANY, )  
 UNIGARD INDEMNITY COMPANY, )  
 13 UNITED STATES FIRE INSURANCE )  
 COMPANY, )  
 14 XL INSURANCE AMERICA, INC., )  
 ZURICH AMERICAN INSURANCE )  
 15 COMPANY, )  
 and DOES 1 through 300, inclusive, )  
 16 )  
 Defendants. )

17  
 18  
 19 As a Complaint against VULCAN MATERIALS COMPANY, ACE PROPERTY  
 20 AND CASUALTY INSURANCE COMPANY, AFFILIATED FM INSURANCE  
 21 COMPANY, ALLIANZ UNDERWRITERS INSURANCE COMPANY, AMERICAN  
 22 EXCESS INSURANCE EXCHANGE, AMERICAN HOME ASSURANCE COMPANY,  
 23 AMERICAN RE-INSURANCE COMPANY, ATLANTA INTERNATIONAL INSURANCE  
 24 COMPANY, CENTURY INDEMNITY COMPANY, CERTAIN UNDERWRITERS AT  
 25 LLOYDS OF LONDON, CONTINENTAL CASUALTY COMPANY, EMPLOYERS  
 26 REASSURANCE CORPORATION, EMPLOYERS REINSURANCE CORPORATION,  
 27 FIREMAN'S FUND INSURANCE COMPANY, GERLING AMERICA INSURANCE  
 28 COMPANY, GRANITE STATE INSURANCE COMPANY, HOLLAND-AMERICA

1 INSURANCE COMPANY, INDUSTRIAL INDEMNITY INSURANCE SERVICES, INC.,  
 2 INTEGRITY INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY,  
 3 NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,  
 4 NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE,  
 5 WISCONSIN, PACIFIC EMPLOYERS INSURANCE COMPANY, PACIFIC INDEMNITY  
 6 COMPANY, SAFETY NATIONAL CASUALTY CORPORATION, STONEWALL  
 7 INSURANCE COMPANY, THE CONTINENTAL INSURANCE COMPANY, TIG  
 8 INSURANCE COMPANY, TRANSPORT INSURANCE COMPANY, UNIGARD  
 9 INDEMNITY COMPANY, UNITED STATES FIRE INSURANCE COMPANY, XL  
 10 INSURANCE AMERICA, INC., ZURICH AMERICAN INSURANCE COMPANY, and  
 11 Does 1 through 300, inclusive (collectively, "Defendants"), Plaintiffs FIRST STATE  
 12 INSURANCE COMPANY and NUTMEG INSURANCE COMPANY (collectively,  
 13 "Plaintiffs") allege as follows:

#### 14 NATURE OF THE ACTION

15 1. Plaintiffs bring this civil action for declaratory relief pursuant to California  
 16 Code of Civil Procedure Section 1060. Plaintiffs ask the Court to declare and adjudge the  
 17 rights, obligations and duties of the parties under certain insurance policies issued or allegedly  
 18 issued by Plaintiffs and allegedly providing coverage to Vulcan Materials Company  
 19 ("Vulcan") and/or Does 1 through 100, as more fully set forth below.

20 2. Specifically, Plaintiffs ask the Court to determine that they have no duty to  
 21 indemnify Vulcan and/or Does 1 through 100 under any insurance policies issued by Plaintiffs  
 22 and allegedly providing coverage to Vulcan and/or Does 1 through 100, for some or all of the  
 23 costs, expenses, damages, settlements or judgments incurred or to be incurred with respect to  
 24 environmental lawsuits against Vulcan arising from the alleged release of chemicals into the  
 25 environment from sites in the city of Modesto, California, (the "Modesto Environmental  
 26 Lawsuits," as defined more fully below).

27 3. In addition, if the Court finds that Plaintiffs have a duty to indemnify Vulcan  
 28 and/or Does 1 through 100 with respect to the Modesto Environmental Lawsuits, Plaintiffs

1 seek an appropriate allocation as to the amount of Vulcan's liability and other costs as among  
2 Plaintiffs and the Defendants.

### 3 THE PARTIES

4 4. Plaintiff First State Insurance Company is a corporation organized and  
5 existing under the laws of the State of Connecticut with its principal place of business in  
6 Massachusetts and is authorized to conduct the business of insurance within the State of  
7 California.

8 5. Plaintiff Nutmeg Insurance Company is a corporation organized and existing  
9 under the laws of the State of Connecticut with its principal place of business in Connecticut  
10 and is authorized to conduct the business of insurance within the State of California.

11 6. Plaintiffs allege on information and belief that defendant Vulcan Materials  
12 Company ("Vulcan") is a New Jersey Corporation, that at all relevant times was and is  
13 authorized to do business within the State of California, with its principal office in California  
14 located within Los Angeles County.

15 7. Plaintiffs allege on information and belief that defendant Ace Property and  
16 Casualty Insurance Company is a corporation duly organized and existing under the laws of  
17 the State of Pennsylvania with its principal place of business in Pennsylvania, and was at all  
18 relevant times authorized to transact the business of insurance within the State of California.

19 8. Plaintiffs allege on information and belief that defendant Affiliated FM  
20 Insurance Company is a corporation duly organized and existing under the laws of the State of  
21 Rhode Island with its principal place of business in Rhode Island, and was at all relevant times  
22 authorized to transact the business of insurance within the State of California.

23 9. Plaintiffs allege on information and belief that defendant Allianz  
24 Underwriters Insurance Company is a corporation duly organized and existing under the laws  
25 of the State of California with its principal place of business in California, and was at all  
26 relevant times authorized to transact the business of insurance within the State of California.

27 10. Plaintiffs allege on information and belief that defendant American Excess  
28 Insurance Exchange is a corporation duly organized and existing under the laws of the State of

1 Vermont with its principal place of business in Vermont, and was at all relevant times  
2 authorized to transact the business of insurance within the State of California.

3 11. Plaintiffs allege on information and belief that defendant American Home  
4 Assurance Company is a corporation duly organized and existing under the laws of the State  
5 of New York with its principal place of business in New York, and was at all relevant times  
6 authorized to transact the business of insurance within the State of California.

7 12. Plaintiffs allege on information and belief that defendant American Re-  
8 Insurance Company is a corporation duly organized and existing under the laws of the State of  
9 Delaware with its principal place of business in New Jersey, and was at all relevant times  
10 authorized to transact the business of insurance within the State of California.

11 13. Plaintiffs allege on information and belief that defendant Atlanta  
12 International Insurance Company is a corporation duly organized and existing under the laws  
13 of the State of New York with its principal place of business in Georgia, and was at all  
14 relevant times authorized to transact the business of insurance within the State of California.

15 14. Plaintiffs allege on information and belief that defendant Certain  
16 Underwriters at Lloyds of London is comprised of certain underwriters transacting insurance  
17 related business as an unincorporated association at Lloyd's of London and/or certain London  
18 Market insurance companies, whose principal places of business in California are unknown to  
19 Plaintiffs, but Plaintiffs believe they were at all relevant times authorized to transact the  
20 business of insurance within the State of California.

21 15. Plaintiffs allege on information and belief that defendant Continental  
22 Casualty Company is a corporation duly organized and existing under the laws of the State of  
23 Illinois with its principal place of business in Illinois, and was at all relevant times authorized  
24 to transact the business of insurance within the State of California.

25 16. Plaintiffs allege on information and belief that defendant Employers  
26 Reassurance Corporation is a corporation duly organized and existing under the laws of the  
27 State of Kansas with its principal place of business in Kansas, and was at all relevant times  
28 authorized to transact the business of insurance within the State of California.

1           17. Plaintiffs allege on information and belief that defendant Employers  
2 Reinsurance Corporation is a corporation duly organized and existing under the laws of the  
3 State of Missouri with its principal place of business in Kansas, and was at all relevant times  
4 authorized to transact the business of insurance within the State of California.

5           18. Plaintiffs allege on information and belief that defendant Fireman's Fund  
6 Insurance Company is a corporation duly organized and existing under the laws of the State of  
7 California with its principal place of business in California, and was at all relevant times  
8 authorized to transact the business of insurance within the State of California.

9           19. Plaintiffs allege on information and belief that defendant Gerling America  
10 Insurance Company is a corporation duly organized and existing under the laws of the State of  
11 New York with its principal place of business in New York, and was at all relevant times  
12 authorized to transact the business of insurance within the State of California.

13           20. Plaintiffs allege on information and belief that defendant Granite State  
14 Insurance Company is a corporation duly organized and existing under the laws of the State of  
15 Pennsylvania with its principal place of business in New York, and was at all relevant times  
16 authorized to transact the business of insurance within the State of California.

17           21. Plaintiffs allege on information and belief that defendant Holland-America  
18 Insurance Company is a corporation duly organized and existing under the laws of the State of  
19 Missouri with its principal place of business currently unknown, and was at all relevant times  
20 authorized to transact the business of insurance within the State of California.

21           22. Plaintiffs allege on information and belief that defendant Industrial  
22 Indemnity Insurance Services, Inc. is a corporation duly organized and existing under the laws  
23 of the State of California with its principal place of business in California, and was at all  
24 relevant times authorized to transact the business of insurance within the State of California.

25           23. Plaintiffs allege on information and belief that defendant Insurance Company  
26 of North America is a corporation duly organized and existing under the laws of the State of  
27 Pennsylvania with its principal place of business in Pennsylvania, and was at all relevant times  
28 authorized to transact the business of insurance within the State of California.



1           24. Plaintiffs allege on information and belief that defendant Integrity Insurance  
2 Company is a corporation duly organized and existing under the laws of the State of New  
3 Jersey with its principal place of business currently unknown, and was at all relevant times  
4 authorized to transact the business of insurance within the State of California.

5           25. Plaintiffs allege on information and belief that defendant Lexington  
6 Insurance Company is a corporation duly organized and existing under the laws of the State of  
7 Delaware with its principal place of business in Massachusetts, and was at all relevant times  
8 authorized to transact the business of insurance within the State of California.

9           26. Plaintiffs allege on information and belief that defendant National Union Fire  
10 Insurance Company of Pittsburgh, Pennsylvania is a corporation duly organized and existing  
11 under the laws of the State of Pennsylvania with its principal place of business in  
12 Pennsylvania, and was at all relevant times authorized to transact the business of insurance  
13 within the State of California.

14           27. Plaintiffs allege on information and belief that defendant Northwestern  
15 National Insurance Company of Milwaukee, Wisconsin is a corporation duly organized and  
16 existing under the laws of the State of Wisconsin with its principal place of business in Ohio,  
17 and was at all relevant times authorized to transact the business of insurance within the State  
18 of California.

19           28. Plaintiffs allege on information and belief that defendant Pacific Employers  
20 Insurance Company is a corporation duly organized and existing under the laws of the State of  
21 Pennsylvania with its principal place of business in Pennsylvania, and was at all relevant times  
22 authorized to transact the business of insurance within the State of California.

23           29. Plaintiffs allege on information and belief that defendant Pacific Indemnity  
24 Company is a corporation duly organized and existing under the laws of the State of  
25 Wisconsin with its principal place of business in Wisconsin, and was at all relevant times  
26 authorized to transact the business of insurance within the State of California.

27           30. Plaintiffs allege on information and belief that defendant Safety National  
28 Casualty Corporation is a corporation duly organized and existing under the laws of the State



1 of Missouri with its principal place of business in Missouri, and was at all relevant times  
2 authorized to transact the business of insurance within the State of California.

3 31. Plaintiffs allege on information and belief that defendant Stonewall Insurance  
4 Company is a corporation duly organized and existing under the laws of the State of Rhode  
5 Island with its principal place of business in Massachusetts, and was at all relevant times  
6 authorized to transact the business of insurance within the State of California.

7 32. Plaintiffs allege on information and belief that defendant The Continental  
8 Insurance Company is a corporation duly organized and existing under the laws of the State of  
9 South Carolina with its principal place of business in Illinois, and was at all relevant times  
10 authorized to transact the business of insurance within the State of California.

11 33. Plaintiffs allege on information and belief that defendant TIG Insurance  
12 Company is a corporation duly organized and existing under the laws of the State of California  
13 with its principal place of business in New Hampshire, and was at all relevant times authorized  
14 to transact the business of insurance within the State of California.

15 34. Plaintiffs allege on information and belief that defendant Transport Insurance  
16 Company is a corporation duly organized and existing under the laws of the State of Ohio with  
17 its principal place of business in Ohio, and was at all relevant times authorized to transact the  
18 business of insurance within the State of California.

19 35. Plaintiffs allege on information and belief that defendant Unigard Indemnity  
20 Company is a corporation duly organized and existing under the laws of the State of  
21 Washington with its principal place of business in Washington, and was at all relevant times  
22 authorized to transact the business of insurance within the State of California.

23 36. Plaintiffs allege on information and belief that defendant United States Fire  
24 Insurance Company is a corporation duly organized and existing under the laws of the State of  
25 Delaware with its principal place of business in New Jersey, and was at all relevant times  
26 authorized to transact the business of insurance within the State of California.

27 37. Plaintiffs allege on information and belief that defendant XL Insurance  
28 America, Inc. is a corporation duly organized and existing under the laws of the State of

1 Delaware with its principal place of business in Connecticut, and was at all relevant times  
2 authorized to transact the business of insurance within the State of California.

3 38. Plaintiffs allege on information and belief that defendant Zurich American  
4 Insurance Company is a corporation duly organized and existing under the laws of the State of  
5 New York with its principal place of business in Illinois, and was at all relevant times  
6 authorized to transact the business of insurance within the State of California.

7 39. The true names and capacities, whether individual, corporate, associate, or  
8 otherwise, of Defendants Does 1 through 100 are unknown to Plaintiffs at the present time and  
9 said defendants are therefore sued by such fictitious names pursuant to California Code of  
10 Civil Procedure section 474. When the true names and capacities of said Doe Defendants  
11 have been ascertained, Plaintiffs will amend this Complaint to include such true names and  
12 capacities. Plaintiffs allege on information and belief that each of the Defendants sued herein  
13 as Does 1 through 100 claim some rights pursuant to written insurance policies allegedly  
14 issued by Plaintiffs and/or the Defendants that are insurance companies ("Defendant Insurers")  
15 with respect to the Modesto Environmental Lawsuits.

16 40. The true names and capacities, whether individual, corporate, associate, or  
17 otherwise, of Defendants Does 101 through 300 are unknown to Plaintiffs at the present time  
18 and said Defendants are therefore sued by such fictitious names pursuant to California Code of  
19 Civil Procedure section 474. When the true names and capacities of said Doe Defendants  
20 have been ascertained, Plaintiffs will amend this Complaint to include such true names and  
21 capacities. Plaintiffs allege on information and belief that each of the Defendants sued herein  
22 as Does 101 through 300 issued, is alleged to have issued, or is otherwise responsible for the  
23 obligations under one or more liability insurance policies issued or allegedly issued to Vulcan  
24 and/or one or more of Does 1 through 100. Plaintiffs are unaware of the policy number,  
25 policy period, or other terms and conditions of the liability insurance policies issued or  
26 allegedly issued by Does 101 through 300, inclusive, but will amend this complaint to provide  
27 such policy information when, and if, any Doe defendants' true names and capacities are  
28 ascertained.

**JURISDICTION**

41. This declaratory relief action is proper under Section 1060 of the California Code of Civil Procedure to determine the rights, duties and obligations of Plaintiffs, Vulcan, and the other Defendants with respect to insurance policies that Vulcan contends create some duty to indemnify with respect to the Modesto Environmental Lawsuits (the "Policies").

42. An actual and justiciable controversy exists between Plaintiffs, Vulcan, and the other Defendants concerning the parties' rights, duties and obligations under the Policies.

43. Vulcan is in the business of designing, manufacturing, packaging, distributing, and/or selling certain chemicals and substances to and used by various dry cleaners in the State of California in their activities and operations at retail locations in California.

**VENUE**

44. Venue is proper in this Court because, upon information and belief, at all relevant times Vulcan was and is authorized and qualified under California law to do business in California and Vulcan's principal business office in California is located in the County of Los Angeles.

45. Specifically, venue is proper in this Court because Vulcan has filed a Statement by a Foreign Corporation with the California Secretary of State, which states that Vulcan's principal business office in California is within the County of Los Angeles.

**THE POLICIES**

46. Plaintiffs issued or are alleged to have issued certain liability insurance policies to Vulcan and/or Does 1 through 100 or allegedly providing coverage to Vulcan and/or Does 1 through 100, including, but not limited to, policies allegedly identified as Policies Nos. 921416, 922285, 923370, 924390, 924614, 926638, 927923, 917384, 930112, 930119, BXS100017, BXS101004, 931004, and 931026 (the "Plaintiffs' Policies").

47. On information and belief, the Defendant Insurers also issued or are alleged to have issued certain liability insurance policies to Vulcan and/or Does 1 through 100 and/or which allegedly provide coverage to Vulcan and/or Does 1 through 100 with policy periods in

1 effect during the relevant time periods. The Plaintiffs' Policies and the insurance policies  
2 issued by the Defendants Insurers are referred to herein collectively as the "Policies."

3 **ENVIRONMENTAL LAWSUITS AGAINST VULCAN**

4 48. On or about November 18, 1998, the City of Modesto Redevelopment  
5 Agency filed a complaint for alleged damages against Vulcan, among others. That action is  
6 entitled *City of Modesto Redevelopment Agency v. Dow Chemical Company, et al.* and is filed  
7 in the California Superior Court for the County of San Francisco, Case No. 999345 (the  
8 "Redevelopment Agency Suit").

9 49. On or about December 3, 1998, the City of Modesto and City of Modesto  
10 Sewer District No. 1 also filed a complaint against Vulcan, among others. That action is  
11 entitled *City of Modesto, et al. v. Dow Chemical Company, et al.* and is filed in the California  
12 Superior Court for the County of San Francisco, Case No. 999643 (the "City of Modesto  
13 Suit").

14 50. On or about March 24, 2003, by order of the Court, the City of Modesto Suit  
15 and the Redevelopment Agency Suit were consolidated under the San Francisco County  
16 Superior Court Case No. 999345. The consolidated Redevelopment Agency Suit and City of  
17 Modesto Suit are herein collectively referred to as the "Modesto Environmental Lawsuits."

18 51. The plaintiffs in the Modesto Environmental Lawsuits asserted a claim  
19 against Vulcan as an alleged manufacturer of certain chemicals, including but not limited to  
20 perchloroethylene ("PERC"), that were distributed to retail dry cleaners in Modesto,  
21 California.

22 52. The plaintiffs in the Modesto Environmental Lawsuits seek to recover from  
23 Vulcan and others the costs of removing, nullifying, or cleaning up environmental  
24 contamination allegedly arising from the release of chemicals, including PERC and  
25 trichloroethylene ("TCE"), into the environment from various dry cleaning operations in  
26 Modesto.

27 53. On June 13, 2006, a jury in the Modesto Environmental Lawsuits awarded  
28 compensatory damages of Three Million One Hundred and Seventy Thousand Dollars

1 (\$3,170,000) against Vulcan and certain other underlying defendants and punitive damages of  
2 One Hundred Million Dollars (\$100,000,000) against Vulcan, hereafter referred to as the  
3 "Modesto Jury Verdict."

4 54. Plaintiffs allege on information and belief that at various times Vulcan  
5 notified or allegedly notified some or all of the Plaintiffs and the Defendant Insurers of the  
6 Modesto Environmental Lawsuits and Vulcan has asserted that some or all of the Plaintiffs  
7 and/or the Defendant Insurers has, had or may have a duty to defend or indemnify Vulcan for  
8 costs, expenses, damages, settlements or judgments with respect to the Modesto  
9 Environmental Lawsuits under their respective alleged insurance policies.

10 55. Plaintiffs contend that they are not obligated to indemnify Vulcan or Does 1  
11 through 100 for some or all costs, expenses, damages, settlements or judgments incurred or  
12 entered with respect to the Modesto Environmental Lawsuits, including with respect to the  
13 Modesto Jury Verdict.

14 56. Plaintiffs believe that the Defendant Insurers also contend that they are not  
15 obligated to indemnify Vulcan or Does 1 through 100 for some or all costs, expenses,  
16 damages, settlements or judgments incurred or entered with respect to the Modesto  
17 Environmental Lawsuits, including with respect to the Modesto Jury Verdict.

18 57. Plaintiffs now seek a declaration of the rights, duties, and liabilities of  
19 themselves (if any), Vulcan, and Does 1 through 100 related to the Modesto Environmental  
20 Lawsuits.

21 58. Plaintiffs also seek a declaration of the rights, duties, and liabilities (if any)  
22 among themselves and the Defendant Insurers under all of the Policies with respect to the  
23 claims of Vulcan and/or Does 1 through 100 for costs, expenses, damages, settlements or  
24 judgments related to the Modesto Environmental Lawsuits, including with respect to the  
25 Modesto Jury Verdict. Plaintiffs further seek a declaration that, if it is determined that either  
26 of the Plaintiffs have a duty to indemnify Vulcan and/or Does 1 through 100 in any respect  
27 related to the Modesto Environmental Lawsuits, such Plaintiff(s) are entitled to equitable  
28 contribution and/or equitable indemnification from the Defendant Insurers under the policies

1 issued by them, such that each such Plaintiff's ultimate share of monies payable, shall not be  
 2 greater than each such Plaintiff's appropriate share (if any).

### 3 **FIRST CAUSE OF ACTION**

#### 4 **(Declaratory Relief – Duty To Indemnify Re Modesto Environmental Lawsuits – Against** 5 **Vulcan And Does 1-100)**

6 59. Plaintiffs reallege and incorporate herein by this reference each and every  
 7 allegation contained in paragraphs 1 through 59, inclusive, as set forth above.

8 60. Plaintiffs allege on information and belief that Vulcan and Does 1 through  
 9 100 contend that Plaintiffs and the Defendant Insurers are obligated to indemnify Vulcan  
 10 and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with  
 11 respect to the Modesto Environmental Lawsuits. Plaintiffs contend that they are not obligated  
 12 to indemnify Vulcan and/or Does 1 through 100 for some or all costs, expenses, damages,  
 13 settlements or judgments incurred or entered with respect to the Modesto Environmental  
 14 Lawsuits. A dispute has arisen and an actual controversy exists concerning the alleged  
 15 obligations of each of the Plaintiffs and each of the Defendant Insurers to indemnify Vulcan  
 16 and/or Does 1 through 100 in connection with the Modesto Environmental Lawsuits.

17 61. Pursuant to California Code of Civil Procedure section 1060, Plaintiffs seek a  
 18 judicial declaration of the parties' respective rights and obligations under the actual or alleged  
 19 liability policies with respect to the Modesto Environmental Lawsuits and, in particular,  
 20 whether and to what extent each of the Plaintiffs has a duty to indemnify Vulcan and/or any of  
 21 Does 1 through 100 for costs, expenses, damages, settlements or judgments with respect to the  
 22 Modesto Environmental Lawsuits.

### 23 **SECOND CAUSE OF ACTION**

#### 24 **(Declaratory Relief – Duty To Indemnify Re Modesto Jury Verdict – Against Vulcan** 25 **And Does 1-100)**

26 62. Plaintiffs reallege and incorporate herein by this reference each and every  
 27 allegation contained in paragraphs 1 through 59, 61 and 62, inclusive, as set forth above.  
 28

63. Plaintiffs allege on information and belief that Vulcan and Does 1 through 100 contend that Plaintiffs and the Defendant Insurers are obligated to indemnify Vulcan and/or Does 1 through 100 with respect to the Modesto Jury Verdict. Plaintiffs contend that they are not obligated to indemnify Vulcan and/or Does 1 through 100 with respect to the Modesto Jury Verdict. A dispute has arisen and an actual controversy exists concerning the alleged obligations of each of the Plaintiffs and each of the Defendant Insurers to indemnify Vulcan and/or Does 1 through 100 in connection with the Modesto Jury Verdict.

64. Pursuant to California Code of Civil Procedure section 1060, Plaintiffs seek a judicial declaration of the parties' respective rights and obligations under the actual or alleged liability policies with respect to the Modesto Jury Verdict and, in particular, whether and to what extent each of the Plaintiffs has a duty to indemnify Vulcan and/or any of Does 1 through 100 with respect to the Modesto Jury Verdict.

### **THIRD CAUSE OF ACTION**

#### **(Declaratory Relief – Duty To Indemnify – Against All Defendants)**

65. Plaintiffs reallege and incorporate herein by this reference each and every allegation contained in paragraphs 1 through 59, 61, 62, 64, and 65, inclusive, as set forth above.

66. Plaintiffs contend that if Plaintiffs are found to be obligated to indemnify Vulcan and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with respect to the Modesto Environmental Lawsuits, including the Modesto Jury Verdict, then some or all of the Defendants are also obligated to indemnify Vulcan and/or Does 1 through 100 with respect to the Modesto Environmental Lawsuits, including the Modesto Jury Verdict, and/or to contribute to the alleged amounts incurred or to be incurred by Vulcan and/or Does 1 through 100. Plaintiffs allege on information and belief that some or all of the Defendants contend that even if Plaintiffs are found to be obligated to indemnify Vulcan and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with respect to the Modesto Environmental Lawsuits, they are not obligated to indemnify Vulcan and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with



1 respect to the Modesto Environmental Jury Lawsuits, including the Modesto Jury Verdict,  
 2 and/or to contribute to any alleged amounts incurred or to be incurred.

3           67. An actual justiciable controversy therefore presently exists among Plaintiffs  
 4 and the Defendants. Pursuant to California Code of Civil Procedure section 1060, Plaintiffs  
 5 seek a judicial declaration of the parties' respective rights and obligations under the insurance  
 6 policies actually or allegedly issued by Plaintiffs and each of the Defendant Insurers that are  
 7 alleged to provide coverage for the Modesto Environmental Lawsuits. In particular, Plaintiffs  
 8 seek a declaration that, if one or more of Plaintiffs is required to indemnify Vulcan and/or any  
 9 of Does 1 through 100 for costs, expenses, damages, settlements or judgments with respect to  
 10 the Modesto Environmental Lawsuits, then one or more of the Defendants are required to  
 11 contribute an appropriate share of the total amount of costs, expenses, damages, settlements or  
 12 judgments paid and/or to be paid by Plaintiffs to or on behalf of Vulcan and/or any of Does 1  
 13 through 100 with respect to the Modesto Environmental Lawsuits.

#### 14                                   **FOURTH CAUSE OF ACTION**

##### 15                                   **(Equitable Indemnity – Against All Defendants)**

16           68. Plaintiffs reallege and incorporate herein by this reference each and every  
 17 allegation contained in paragraphs 1 through 59, 61, 62, 64, 65, 67, and 68, inclusive, as set  
 18 forth above.

19           69. If it is adjudicated that Plaintiffs are obligated to indemnify Vulcan and/or  
 20 any of Does 1 through 100 for costs, expenses, damages, settlements or judgments with  
 21 respect to the Modesto Environmental Lawsuits, then, based upon the principle of equitable  
 22 indemnification, some or all of the Defendants should be required to contribute or reimburse  
 23 an appropriate portion of the total amount paid and/or to be paid to or on behalf of Vulcan  
 24 and/or any of Does 1 through 100.

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **(Equitable Contribution – Against All Defendants)**

3 70. Plaintiffs reallege and incorporate herein by this reference each and every  
4 allegation contained in paragraphs 1 through 61, 62, 64, 65, 67, 68, and 70, inclusive, as set  
5 forth above.

6 71. If it is adjudicated that Plaintiffs are obligated to indemnify Vulcan and/or  
7 any of Does 1 through 100 for costs, expenses, damages, settlements or judgments with  
8 respect to the Modesto Environmental Lawsuits, then, based upon the principle of equitable  
9 contribution, some or all of the Defendants should be required to contribute an appropriate  
10 portion of the total amount paid and/or to be paid to or on behalf of Vulcan and/or any of Does  
11 1 through 100.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for relief as follows:

14 **On The First, Second, And Third Causes Of Action**

15 1. For a judicial declaration of the respective rights and obligations of each of  
16 the Plaintiffs and each of the Defendants under all policies allegedly applicable to the costs,  
17 expenses, damages, settlements or judgments allegedly incurred or to be incurred with respect  
18 to the Modesto Environmental Lawsuits, including with respect to the Modesto Jury Verdict;

19 **On The Fourth And Fifth Causes Of Action**

20 1. For a judicial declaration of the respective rights and obligations of each of  
21 the Plaintiffs and each of the Defendants for indemnity and/or contribution related to the  
22 Modesto Environmental Lawsuits and, in particular, if it is adjudicated that Plaintiffs are  
23 obligated to indemnify Vulcan and/or any of Does 1 through 100 for any costs, expenses,  
24 damages, settlements or judgments with respect to the Modesto Environmental Lawsuits, that  
25 some or all of the Defendants are liable to one or both of the Plaintiffs for their appropriate  
26 share of the amounts incurred and/or to be incurred;

27 ///

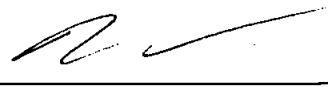
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On All Causes Of Action

1. For attorneys' fees and costs incurred herein; and
2. For such other and further relief as the Court deems appropriate.

DATED: June 28, 2006

Michael W. Ellison  
Smith ♦ Ellison  
A Professional Corporation

By:   
Michael W. Ellison  
Attorney for Plaintiffs First State Insurance  
Company and Nutmeg Insurance Company